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Filing date: **03/27/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91179897
Party	Defendant Bristol Technologies, Inc.
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Date	03/27/2009
Attachments	applicantsanswer090327.pdf ( 8 pages )(208125 bytes ) certificationofserviceofapplicantsmotionandanswer090327.pdf ( 1 page )(15302 bytes )

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Information Builders, Inc.

Opposer,

V.

Bristol Technologies, Inc.,

Applicant

Opposition No. 91179897

Motion to extend and  
Answer

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**MOTION TO EXTEND TIME TO ANSWER OPPOSER'S AMENDED  
OPPOSITION AND APPLICANT'S ANSWER TO AMENDED OPPOSITION OF  
APRIL 3, 2008**

Motion

Applicant hereby (1) moves to extend the time to answer Opposer's amended Opposition and to answer Opposer's amended Opposition.

In *Fred Hayman Beverly Hills, Inc. v. Jacques Bernier, Inc.*, d.b.a., *Parfums Gianelli* 21 U.S.P.Q.2D 1556 it was held that:

"Although applicant in fact is requesting an enlargement of its time to file an answer, the showing which has consistently been required by the Board and the courts in order to permit the late filing of an answer is that set forth in Rule 55(c), i.e., good cause, and not the excusable neglect required by Rule 6(b)(2). [\*3] See *Kleckner v. Glover Trucking Corporation*, 103 F.R.D. 553 (M.D.Penn 1984). This good cause is usually found to have been established if the delay in filing is not the result of willful conduct or gross neglect on the part of the defendant, if the delay will not result in substantial prejudice to the plaintiff, and if the defendant has a meritorious defense."

In the present case applicant misinterpreted the Board's decision to mean that the board would next rule on the merits of Opposer's arguments that the marks in question were confusingly similar. This is a mistake like that referred to in *Fred Hayman Beverly Hills, Inc.* in that it does not arise out of willful conduct or gross negligence.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Because any use being made of the applied for mark by applicant is at most deminimis and Opposer remains free to use its Marks in commerce, opposer is not substantially prejudiced by this extension of time.

Attached herewith is Applicant's answer to the amended Opposition of April 3, 2008 asserting Applicant's meritorious defenses.

Therefore Applicant's motion to extend the time to answer Opposer's amended Opposition should be granted.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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APPLICANT'S ANSWER

In summary, applicant reasserts its answers to re-alleged ground 1 through 10 and answers newly alleged grounds 11 and 12.

Applicant, Bristol Technologies, Inc., hereinafter Applicant, upon knowledge and belief, denies that Opposer, Information Builders, Inc., a corporation of the State of New York will be damaged by registration of the mark "Bristol Focus" as identified by application number 78/954,755. Further, based on knowledge and belief, Applicant denies or admits the alleged grounds for this opposition, as follows:

Alleged Ground 1) Opposer produces and markets computer software for data base management, for use in decision support systems, and for information control, reporting, and networking, including designing, building, and maintaining databases and provides to its customers support services including education in the use of software, and technical support and consultation in connection with implementation and installation of the software.

Applicant's Answer 1) Applicant neither denies nor admits this allegation. Applicant has insufficient knowledge of the nature, quantity, and type of products or services produced or offered by Opposer to admit or deny this allegation.

Alleged Ground 2) Since 1975, Opposer has been marketing its software under the trademark "Focus" to computer users in a wide variety of industries, and Opposer has registered its trademark in the Patent and Trademark Office under nos. 1,652,265; 2,606,298; and 2,821,942.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Applicant's Answer 2) Applicant neither denies nor admits this allegation. Applicant has insufficient knowledge of the nature, quantity, and type of products or services produced or offered by Opposer, to admit or deny this allegation. However, upon knowledge and belief Opposer has abandoned use of any of its marks used in conjunction with goods and services sufficiently closely related to the goods and services of Applicant as to cause likelihood of confusion or dilution.

Alleged Ground 3) In the early 1980's Opposer began marketing its software under various trademarks including the word FOCUS. Opposer is the owner of the following ... .

Applicant's Answer 3) Applicant neither denies nor admits this allegation. Applicant has insufficient knowledge of the nature, quantity, and type of products or services produced or offered by Opposer, to admit or deny this allegation. However, upon knowledge and belief Opposer has abandoned use of any of its marks used in conjunction with goods and services sufficiently closely related to the goods and services of Applicant as to cause likelihood of confusion or dilution.

Alleged Ground 4) Opposer sells computer software enabling users, via the Internet to manage data using applicant's FOCUS Software.

Applicant's Answer 4) Applicant neither denies nor admits this allegation. Applicant has insufficient knowledge of the nature, quantity, and type of products or services produced or offered by Opposer, to admit or deny this allegation.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Alleged Ground 5) Opposer sells computerized instruction and training courses, accompanied by related printed materials, for teaching the use of FOCUS software.

Applicant's Answer 5) Applicant neither denies nor admits this allegation. Applicant has insufficient knowledge of the nature, quantity, and type of products produced or offered by Opposer, to admit or deny this allegation.

Alleged Ground 6) Opposer has published a magazine entitled FOCUS SYSTEMS JOURNAL, and newsletters entitled "FOCUS NEWS and FOCUS FLASH, distributed to computer users, as well as an online magazine entitled "The FOCUS Quarterly", and currently publishes WEBFOCUS Journal.

Applicant's Answer 6) Applicant neither denies nor admits this allegation. Applicant has insufficient knowledge of the nature, quantity, and type of products or services produced or offered by Opposer, to admit or deny this allegation.

Alleged Ground 7) Opposer established "The FOCUS User Group" (FUSE) to which its customers belong, and this group holds annual conferences to which representatives of those who use FOCUS software attend educational workshops, see product demonstrations, and otherwise exchange information about FOCUS software.

Applicant's Answer 7) Applicant neither denies nor admits this allegation. Applicant has insufficient knowledge of the nature, quantity, and type of products or services produced or offered by Opposer, to admit or deny this allegation.

Alleged Ground 8) Applicant seeks to register BRISTOL FOCUS for "Computer Operating Programs; Computers and

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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instructional manuals sold as a unit; Operating system programs.

Applicant's Answer 8) Applicant admits this allegation. Applicant seeks registration of its Mark "Bristol Focus" in International Class 009: Computer operating programs; Computers and instructional manuals sold as a unit; Operating system programs

Alleged Ground 9) Upon information and belief, Applicant's goods are so closely related to Opposer's software, the printed and on-line materials distributed by Opposer, and Opposer's services, that use of similar marks on the respective goods and services of the parties is likely to cause confusion or mistake, or to deceive purchasers as to the origin of the goods and services.

Applicant's Answer 9) Applicant denies this allegation. Applicant's mark "Bristol Focus" is sufficiently distinct from Opposer's marks as to obviate likelihood of confusion or dilution and the goods and services offered by Applicant are sufficiently different from those of Opposer as to obviate likelihood of confusion or dilution. Upon knowledge and belief Opposer has abandoned use of any of its marks used in conjunction with goods and services sufficiently closely related to the goods and services of Applicant as to cause likelihood of confusion or dilution.

Alleged Ground 10) Upon information and belief, the registration by applicant of BRISTOL FOCUS for goods closely related to Opposer's goods and services will impair Opposer's free use of its trademark, and will dilute the distinctive quality of Opposer's famous "Focus" trademarks, which became famous prior to Applicant's first use date,

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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and will result in injury to the good will Opposer has acquired with respect its Trademark, all to Opposer's damage.

Applicant's Answer 10) Applicant denies this allegation. Applicant's mark "Bristol Focus" is sufficiently distinct from Opposer's marks as to obviate likelihood of confusion or dilution and the goods and services offered by Applicant are sufficiently different from those of Opposer as to obviate likelihood of confusion or dilution. Upon knowledge and belief Opposer has abandoned use of any of its marks used in conjunction with goods and services sufficiently closely related to the goods and services of Applicant as to cause likelihood of confusion or dilution.

Alleged ground 11: Upon Information and Belief the opposed application is void ab initio because, although filed under section 1(a) applicant did not use the alleged Trademark in commerce prior to the filing date of the application.

Applicant's Answer 11: Because applicant's motion to amend the application to a filing under section 1(b) has been granted, this allegation is moot.

Alleged Ground 12: Upon Information and Belief applicant engaged in fraud in the US Patent office by falsely claiming use of the mark in commerce in connection with the goods identified in its application.

Applicant's Answer 12: Applicant denies this allegation. All statements made by applicant during the prosecution of this application were true to applicant's best knowledge and understanding at the time such statements were made. However, because applicant's motion



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

to amend the application to a filing under section 1(b) has been granted this allegation is also moot.

In summary, applicant reasserts its answers to re-alleged ground 1 through 10 and answers newly alleged grounds 11 and 12.

Wherefore, Applicant prays that the registration for which application has been made be allowed and that this opposition be denied.

Bristol Technologies, Inc.

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
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Serial No. 78954755

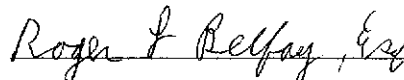
Bristol Technologies, Inc.,

Applicant

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It is hereby certified that a copy of Applicant's motion to extend the time for response and Applicant's Answer to Opposer's amended Opposition of April, 3 2008 has been forwarded, This March 27, 2009 by first class mail to:

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